

FRED HOLBROOK

IBLA 94-861

Decided January 14, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CAMC 259777-CAMC 259778.

Reversed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

Under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), and its implementing regulations, a miner holding 10 or fewer mining claims, and meeting certain conditions, was entitled to seek a rental fee exemption for one or more of those claims and submit rental fees for any remaining claims. A miner holding 10 or fewer claims could also elect to pay rental fees for some of the claims in one assessment year and seek an exemption for the same claims in the ensuing assessment year.

APPEARANCES: Louis Demas, Esq., Sacramento, California, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Fred Holbrook has appealed from an August 8, 1994, decision of the California State Office, Bureau of Land Management (BLM), declaring the Marion and Wynn lode mining claims (CAMC 259777 and CAMC 259778) abandoned and void because of a failure to pay, on or before August 31, 1993, the annual rental fee payment of \$100 per claim for the 1994 assessment year, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1378-79 (1992), and 43 CFR 3833.1-5 (1993).

On October 5, 1992, Congress passed the Act, a provision of which established that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided

otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 \* \* \*.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

Congress further mandated that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant \* \* \*." 106 Stat. 1379.

Implementing Departmental regulations provided as follows at 43 CFR 3833.1-5 (1993):

(a) Mining claim or site located on or after October 6, 1992, and on or before September 30, 1994. The \$100 nonrefundable rental fee, for the assessment year in which the mining claim or site was located, shall be paid for each mining claim, mill site, or tunnel site, at the time of recording of the mining claim, mill site, or tunnel site pursuant to section 314(b) of FLPMA and § 3833.1-2 in addition to the service charge required by § 3833.1-4(a).

(1) For all mining claims, mill sites, or tunnel sites located on or before August 31, 1993, and for which the notice of location is filed in a timely manner pursuant to section 314(b) of FLPMA before August 31, 1993, the \$100 rental fee for the assessment year beginning on September 1, 1993, shall be paid on or before August 31, 1993.

The only exemption provided from this annual rental requirement was the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, mill sites, and tunnel sites on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994).

Failure to pay the rental fee or file the required small miner exemption documents within the prescribed time period "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \*, which shall be void." 43 CFR 3833.4(a)(2) (1993).

Appellant located the Wynne and Marion lode claims on August 2 and 3, 1993, respectively, and recorded them with BLM on August 6, 1993. In accordance with 43 CFR 3833.1-5(a), he was required to pay a nonrefundable rental fee of \$100 per claim for the assessment year in which the claims were located (1993 assessment year) at the time of recordation. Appellant

complied with that requirement. In addition, under 43 CFR 3833.1-5(a)(1), he was required to file a \$100 per claim rental fee for the 1994 assessment year on or before August 31, 1993. However, rather than pay that fee, appellant took advantage of the provisions of 43 CFR 3833.1-5(e) (1993), which allowed a small miner to elect to file for an exemption in 1 of the 2 years covered by the law and pay the rental fee in the other. On August 31, 1993, he filed a small miner exemption for the two claims for the 1994 assessment year. In this case, because of his dates of location, appellant was required to pay the rental fees for the claims for the 1993 assessment year, but he sought the exemption for the 1994 assessment year.

For a third claim held by appellant, the Marion Mine placer (CAMC 255524), which is not at issue in this case, he timely paid rental fees for the 1993 and 1994 assessment years.

Citing the following language in the preamble to the final rulemaking implementing the Act (58 FR 38193 (July 15, 1993)), BLM declared the two claims in question abandoned and void, stating:

An interpretation of the Act of October 5, 1992, as printed in the Preamble of the Federal Register, dated July 15, 1993, (FR Vol. 58 No. 134, page 38193) states, "Because the language of the Act only allows for a choice between either paying the fee or doing the assessment work and meeting the filing requirements ...on such ten or fewer claims, a claimant may not pay the fees for a portion of his or her ten or fewer claims and take the exemption on the remaining portion." [Emphasis in original].

(Decision at 2).

Appellant contends on appeal that he made his filings in accordance with BLM instructions and was at no time informed of BLM's interpretation of the preamble language quoted in the decision. Appellant points to 43 CFR 3833.1-6(a)(1) (1993), which allowed a claimant holding 10 or fewer claims to pay the rental fee in addition to filing for a small miner exemption. This language, appellant asserts, indicates that small miners could pay rental fees for some claims and seek exemptions for others (Statement of Reasons at 3). Appellant further contends that BLM's interpretation of the Act is in error and that a basis for estoppel exists.

By orders dated October 24, 1994, and January 25, 1995, the Board directed BLM to file an answer to appellant's statement of reasons. BLM did not respond to those orders.

In two recent cases, James R. Ragsdale, 137 IBLA 243 (1996), and Richard W. Taylor, 136 IBLA 299 (1996), this Board addressed the issue of whether a claimant holding 10 or fewer claims could file and qualify for an exemption for some of those claims and pay rental fees for others. In Taylor, the appellants filed exemption certificates on August 30, 1993, for four claims and at the same time paid rental fees for two of the same claims. In its decision, BLM stated that the appellants had an approved plan of operations for two of the claims, but not for the other two for

which fees had been paid. BLM denied the small miner exemption because the appellants did not have all their claims under a plan of operations and declared the two claims for which fees had not been paid abandoned and void for failure to pay the fees.

The Board reversed BLM's decision concluding that a mining claimant may seek and obtain a small miner exemption for claims under an approved plan of operations and also pay rental fees for other claims not covered by a plan. In reaching that conclusion, the Board stated that it found nothing in the Act that prevented a claimant holding 10 or fewer claims from paying rental on some of those claims and seeking an exemption for the others.

In Ragsdale, the appellants timely filed separate certifications of exemption from fees for the 1993 and 1994 assessment years for six mining claims. They also timely paid \$200 in rental fees for another claim for the 1993 and 1994 assessment years. BLM declared the six claims abandoned and void for failure to pay the rental fees, relying on the preamble language cited above. Citing Taylor, the Board reversed, concluding that the preamble language was not binding and that the regulations themselves allowed a claimant to seek an exemption for some claims and pay the fees for others.

Based on our holdings in Taylor and Ragsdale, we reverse the BLM decision in this case. Appellant complied with the applicable regulations.

He paid the rental fees for the claims in question for the 1993 assessment year. He also paid the rental fees for a third claim for the 1993 and 1994 assessment years. Under those circumstances, BLM found he could not, as he did, seek an exemption for the two claims in question for the 1994 assessment year. BLM erred. The regulations allowed appellant that option. BLM improperly declared the claims at issue abandoned and void for failure to pay timely rental fees. Whether or not appellant, in fact, qualifies for a small miner exemption may be determined by BLM upon return of the case file.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision declaring the Wynn and Marion lode mining claims (CAMC 259777-CAMC 259778) abandoned and void for failure to pay timely rental fees is reversed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge